

## Gibbs, Jason

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**From:** Gibbs, Jason  
**Sent:** Wednesday, April 10, 2019 11:22 AM  
**To:** Johnson, Jaye; Anderson, Thomas; Levine, Mark; Gobeille, Al  
**Subject:** Re: questions re: autopsy findings

Adding Al.

Jaye, Tom, Al and Mark:

The Mayor's office wants us to intervene in the matter below. That does not feel right to me, at any level. The VSP release is already out — I'm inclined to tell the Mayor that he needs to work through the appropriate law enforcement and public health channels.

Does that make sense to you?

JG

Jason G. Gibbs  
Chief of Staff

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**From:** Jordan Redell <jredell@burlingtonvt.gov>  
**Sent:** Wednesday, April 10, 2019 11:11:02 AM  
**To:** Gibbs, Jason  
**Subject:** Fwd: questions re: autopsy findings

Hi Jason - just tried giving you a call. Hoping to discuss the below as soon as possible.  
Jordan

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**From:** del Pozo, Brandon <bdelpozo@bpdvt.org>  
**Sent:** Wednesday, April 10, 2019 8:52:11 AM  
**To:** Levine, Mark  
**Cc:** Jordan Redell  
**Subject:** questions re: autopsy findings

Dear Dr. Levine,

Thank you for finding the time to talk soon. This email outlines the concerns that led us to ask to talk to you.

Dr. Shapiro has concluded in his report of autopsy that he has been *unable to determine the cause of Douglas Kilburn's death*, concluding that could have been from one of many possible causes, the actual combination of which remains unknown. This is from his report:

"Autopsy demonstrated features of his natural diseases and injuries as described above but, no single catastrophic, anatomic cause of sudden death. Post mortem imaging showed 'fluid and blood in the right maxillary sinus, mildly increased in volume from the premortem CT scan.' Terminal mechanisms that may explain his death include cardiac dysrhythmia (irregular heart beats caused by either natural disease or medications), seizure, and/or respiratory distress, each of which Mr. Kilburn has experienced in the past or has risk factors for. Pain and stress are also known to have physiologic effects on the body, particularly on the cardiovascular system. Each of these possible terminal mechanisms would have been a physiologic event that leaves no anatomic trace to be discovered at autopsy. Therefore, autopsy cannot differentiate which mechanism, or mechanisms, occurred or quantify the amount of pain and stress. Despite the inability to define the mechanisms, Mr. Kilburn's death was due to a combination of his underlying health issues, one of which is recent trauma. This is reflected in the cause and contributory cause of death statements. Due to the inclusion of trauma as a contributor to the death, the manner of death is not natural."

I have conferred with the mayor and we are in agreement in requesting clarification of these findings before they are made public. It does not appear to be the case, by any means, that a standard of either beyond a reasonable doubt, or even more likely than not, was met in the determining Douglas Kilburn's. it is also not clear from the report how the "but for" standard it met. This is especially so since the ME has not been able to go as far as to determine the decedent's cause of death.

The standard for ruling a death a homicide, based on the City of Burlington's conferral with experienced, supervising medical examiners in New York and California, is that the manner of a person's death is a homicide because it is *beyond a reasonable doubt* that but for the homicidal acts of a person, the deceased would not have died due to the causes by which he is determined to have died.

Whether the person committed the acts or not, who that person was, and whether the acts were a crime, is understood to be a legal matter. The medical question is whether or not it is beyond a reasonable doubt that but for some act by a person, the decedent would not have died from the causes by which he died.

Again, we understand that unlike cases of accidental deaths, natural deaths, and suicides, which are "more likely than not" or "preponderance of the evidence" cases, the standard of belief in the practice of medical

examiners is "beyond a reasonable doubt." Our concerns is that the report of autopsy does not support a conclusion of homicide based on any of these standards.

*In other words, it does not seems possible to rule a death a homicide by either standard of proof in the medical profession--either the one used as a standard for homicides, or the lesser one--if one cannot determine why a person died.*

The need to clarify this is urgent and acute, because it will bear greatly on the career and life of a police officer who was attacked by the decedent as the decedent blocked traffic in the Ambulance bay of the UVMHC Emergency Department. It will also cause people to impugn the quality of care offered by Vermont's flagship hospital, which treated and released the decedent after caring for him overnight. It will also imply that the police used homicidal violence on the decedent, regardless of the legal outcomes.

If the ruling on manner of death is not to be amended, we believe we need an account of the rationale, the standards of proof used in formulating beliefs about this manner in the case at hand and in Vermont generally, and why they were satisfied in this case, and why they resulted in the classificaiton of Mr. Kilburn's death as a homicide.

The Vermont State Police are planning on sending out a press release that Kilburn's death was a homicide in a few hours.

Sincerely,

Brandon del Pozo

Chief of Police

Burlington, Vermont

@OneNorthAvenue

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## Gibbs, Jason

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**From:** Gibbs, Jason  
**Sent:** Wednesday, April 10, 2019 12:10 PM  
**To:** Gobeille, Al; Levine, Mark; Anderson, Thomas; Johnson, Jaye  
**Subject:** FW: questions re: autopsy findings

FYI – This is my response to the Mayor's office.

JG

---

**From:** Gibbs, Jason  
**Sent:** Wednesday, April 10, 2019 12:08 PM  
**To:** Jordan Redell <jredell@burlingtonvt.gov>  
**Subject:** RE: questions re: autopsy findings

Good morning, Jordon. It would not be appropriate for us to intervene in this matter. I encourage the Mayor and the Chief to pursue this discussion through the normal VDH and law enforcement channels. It is my understanding that Dr. Levine will be, or has already been, in touch with the Chief.

I would also suggest that the City be very careful not to do anything that could be misconstrued as interfering in, or seeking to influence, the investigation. I'm certain that's *not* the intent, but the risk of misperception is something your team should consider.

Thanks for understanding.

JG

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**From:** Jordan Redell <jredell@burlingtonvt.gov>  
**Sent:** Wednesday, April 10, 2019 11:11 AM  
**To:** Gibbs, Jason <Jason.Gibbs@vermont.gov>  
**Subject:** Fwd: questions re: autopsy findings

Hi Jason - just tried giving you a call. Hoping to discuss the below as soon as possible.  
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**From:** del Pozo, Brandon <bdelpozo@bpdvt.org>  
**Sent:** Wednesday, April 10, 2019 8:52:11 AM  
**To:** Levine, Mark  
**Cc:** Jordan Redell  
**Subject:** questions re: autopsy findings

Dear Dr. Levine,

Thank you for finding the time to talk soon. This email outlines the concerns that led us to ask to talk to you.

Dr. Shapiro has concluded in his report of autopsy that he has been *unable to determine the cause of Douglas Kilburn's death*, concluding that could have been from one of many possible causes, the actual combination of which remains unknown. This is from his report:

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I have conferred with the mayor and we are in agreement in requesting clarification of these findings before they are made public. It does not appear to be the case, by any means, that a standard of either beyond a reasonable doubt, or even more likely than not, was met in the determining Douglas Kilburn's. It is also not clear from the report how the "but for" standard it met. This is especially so since the ME has not been able to go as far as to determine the decedent's cause of death.

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Whether the person committed the acts or not, who that person was, and whether the acts were a crime, is understood to be a legal matter. The medical question is whether or not it is beyond a reasonable doubt that but for some act by a person, the decedent would not have died from the causes by which he died.

Again, we understand that unlike cases of accidental deaths, natural deaths, and suicides, which are "more likely than not" or "preponderance of the evidence" cases, the standard of belief in the practice of medical examiners is "beyond a reasonable doubt." Our concerns is that the report of autopsy does not support a conclusion of homicide based on any of these standards.

In other words, it *does not seem possible to rule a death a homicide by either standard of proof in the medical profession--either the one used as a standard for homicides, or the lesser one--if one cannot determine why a person died.*

The need to clarify this is urgent and acute, because it will bear greatly on the career and life of a police officer who was attacked by the decedent as the decedent blocked traffic in the Ambulance bay of the UVMHC Emergency Department. It will also cause people to impugn the quality of care offered by Vermont's flagship hospital, which treated and released the decedent after caring for him overnight. It will also imply that the police used homicidal violence on the decedent, regardless of the legal outcomes.

If the ruling on manner of death is not to be amended, we believe we need an account of the rationale, the standards of proof used in formulating beliefs about this manner in the case at hand and in Vermont generally, and why they were satisfied in this case, and why they resulted in the classification of Mr. Kilburn's death as a homicide.

The Vermont State Police are planning on sending out a press release that Kilburn's death was a homicide in a few hours.

Sincerely,

Brandon del Pozo  
Chief of Police  
Burlington, Vermont

@OneNorthAvenue

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## Gibbs, Jason

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**From:** Gibbs, Jason  
**Sent:** Wednesday, April 10, 2019 12:57 PM  
**To:** Anderson, Thomas; Levine, Mark; Johnson, Jaye; Gobeille, Al  
**Cc:** Birmingham, Matthew  
**Subject:** Re: questions re: autopsy findings

Received.

Jason G. Gibbs  
Chief of Staff

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**From:** Anderson, Thomas <Thomas.Anderson@vermont.gov>  
**Sent:** Wednesday, April 10, 2019 12:54 PM  
**To:** Levine, Mark; Gibbs, Jason; Johnson, Jaye; Gobeille, Al  
**Cc:** Birmingham, Matthew  
**Subject:** RE: questions re: autopsy findings



Sorry. I just got out of a meeting. It's completely inappropriate for Delpozo to be attempting to influence/change the ME's finding and, in turn, the investigation. If the ME's finding need clarification, that is for the prosecutor to take up with the ME.

We have had to repeatedly advise Delpozo that he has recused his Department from this investigation. For him now to again be inserting himself in this matter is very troubling.

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**From:** Levine, Mark <Mark.Levine@vermont.gov>  
**Sent:** Wednesday, April 10, 2019 11:39 AM  
**To:** Gibbs, Jason <Jason.Gibbs@vermont.gov>; Johnson, Jaye <Jaye.Johnson@vermont.gov>; Anderson, Thomas <Thomas.Anderson@vermont.gov>; Gobeille, Al <Al.Gobeille@vermont.gov>  
**Subject:** Re: questions re: autopsy findings

You are correct, it does not feel right.

I had what I considered to be a productive talk with the Chief. I believe he understands the differences between medical opinion, standards of practice of the Medical Examiner, and legal proceedings and definitions in a court of law.

They will be sending out a press release that emphasizes all the points made in the autopsy report about the multifactorial nature of this death and focuses attention on the results and inherent uncertainties, which is certainly fair.

Your plan of action seems appropriate to me, but obviously I would appreciate the input of others in this email.

MAL

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**From:** Gibbs, Jason

**Sent:** Wednesday, April 10, 2019 11:21 AM

**To:** Johnson, Jaye; Anderson, Thomas; Levine, Mark; Gobeille, Al

**Subject:** Re: questions re: autopsy findings

Adding Al.

Jaye, Tom, Al and Mark:

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Jason G. Gibbs

Chief of Staff

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**From:** Jordan Redell <[jredell@burlingtonvt.gov](mailto:jredell@burlingtonvt.gov)>

**Sent:** Wednesday, April 10, 2019 11:11:02 AM

**To:** Gibbs, Jason

**Subject:** Fwd: questions re: autopsy findings

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**To:** Levine, Mark

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**From:** Gibbs, Jason  
**Sent:** Wednesday, April 10, 2019 1:02 PM  
**To:** Birmingham, Matthew; Anderson, Thomas  
**Subject:** FW: questions re: autopsy findings

Tom, just wanted to make sure Matt has the response I sent to the Mayor's office. I also have text messages and voicemails from her this morning – she was energetically reaching out trying to have us intervene to pause the release. Response below.

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**From:** Gibbs, Jason  
**Sent:** Wednesday, April 10, 2019 12:10 PM  
**To:** Gobeille, Al <Al.Gobeille@vermont.gov>; Levine, Mark <Mark.Levine@vermont.gov>; Anderson, Thomas <Thomas.Anderson@vermont.gov>; Johnson, Jaye <Jaye.Johnson@vermont.gov>  
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